No. 85-155

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

THOMAS A. COUGHLIN, III,
CHARLES P. HERNANDEZ (*sic* Charles P. Hermanderz),
HAROLD J. SMITH, N. DE SANTOS,

Petitioners,

—against—

EMMANUEL D. PATTERSON,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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Question Presented

Did the court of appeals correctly hold that petitioners' placement of respondent prisoner in punitive detention without affording him an opportunity to call witnesses in his defense denied him procedural rights guaranteed by the Constitution?

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Statement of the Case

Respondent supplements petitioners' statement of the case in the following respects:

1. After the "Superintendent's Proceeding" in which petitioner Captain De Santos found respondent Patterson guilty of certain charges and sentenced him to sixty days punitive segregation and sixty days loss of good time, Patterson appealed to petitioners Thomas A. Coughlin, III, the Commissioner of the New York State Department of Correctional Services, and Harold J. Smith, the Superin-

tendent of the Attica Correctional Facility. These petitioners affirmed the decision of the Superintendent's Proceeding.

2. The Court of Appeals for the Second Circuit held that Patterson had stated a claim under 42 U.S.C. § 1983 by alleging that petitioners had placed him in punitive isolation without affording him a hearing that conformed to the due process requirements this Court enunciated in *Wolff* v. *McDonnell,* 418 U.S. 539 (1974).

3. The court below distinguished *Parratt* v. *Taylor,* 451 U.S. 527 (1981), and *Hudson* v. *Palmer,* 468 U.S. ——, 104 S. Ct. 3194 (1984), on the ground that in those cases predeprivation hearings had been impossible because unforeseeable, "random and unauthorized" state action had caused claimants' property losses. In contrast, Patterson's complaint alleged an authorized and foreseeable deprivation of liberty:

> "Unlike the deprivation of property that occurred in *Parratt,* here the responsible state officials who had the power to grant [Patterson] a hearing obviously knew that appellant was in peril of being deprived of his liberty interest. In fact, he was *given* a hearing, albeit a deficient one. Thus, the deprivation of liberty was neither 'random' nor 'unauthorized' ".

Patterson v. *Coughlin, et al.,* 761 F.2d 886, 892 (2d Cir. 1985) (emphasis in original) (App. at A15).

Summary of Argument

This case is unworthy of the Court's review. The district court dismissed, in a cursory opinion, Patterson's *pro se* prisoner complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim; the circuit court reversed on

the narrow ground that the allegations set forth in the complaint raised issues of fact as to whether petitioners' punitive segregation of Patterson was authorzed and foreseeable. This is not a question that warrants this Court's attention. *See* Sup. Ct. Rule 17.

Reasons for Denying the Writ

1. The Second Circuit's decision was required by this Court's holding in *Wolff* v. *McDonnell*.

In *Wolff* v. *McDonnell*, 418 U.S. 539 (1974), this Court held that when a prison inmate is threatened with punitive segregation, the due process clause of the Fourteenth Amendment guarantees the inmate certain minimum process, including an opportunity to call witnesses and present evidence. *Id.* at 564-66. This Court recently reaffirmed the hearing requirements enunciated in *Wolff*. *See Hughes* v. *Rowe*, 449 U.S. 5, 9 (1980) (*per curiam*).

The issue before the court below was whether petitioners' placement of Patterson in punitive detention, without providing him an opportunity to call witnesses in his defense, denied Patterson rights guaranteed him by the Constitution.* This Court's decision in *Wolff* compelled the court below to resolve that issue in Patterson's favor.

Petitioners concede that Patterson's punitive segregation followed a hearing that failed in significant respects to satisfy the requirements set forth in *Wolff* and *Hughes*. Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit ("Petition") at 6-7. Peti-

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* Recovery under section 1983 is predicated upon a denial "under color of state law" of a right secured by the Constitution or federal statute. *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 150 (1970). Petitioners have not denied that they were acting under color of state law when they placed Patterson in punitive detention. Nor have they denied that the liberty interest at issue is of constitutional dimension.

tioners nonetheless mistakenly invoke this Court's decisions in *Parratt* v. *Taylor,* 451 U.S. 527 (1981), and *Palmer* v. *Hudson,* 468 U.S. ——, 104 S. Ct. 3194 (1984), to argue that their falure to accord Patterson a predeprivation hearing that conformed to the *Wolff* standards did not violate the due process clause. As demonstrated below, the Second Circuit correctly rejected petitioners' unwarranted attempt to create conflict among this Court's recent precedents where none in fact exists.

2. The Second Circuit's decision does not conflict with *Parratt* v. *Taylor* or *Hudson* v. *Palmer*.

One year after this Court, in *Hughes* v. *Rowe,* reaffirmed its decision in *Wolff,* it held that the due process clause does not require a state to provide predeprivation process where the deprivation is not foreseeable by the state and a hearing prior to the deprivation is accordingly impractical. *See Parratt* v. *Taylor,* 451 U.S. 527;* *accord Hudson* v. *Palmer,* 104 S. Ct. 3194; *see also* Petition at 5.

Rejecting petitioners' contention that *Parratt* and *Hudson* excused their failure to afford Patterson a proper *Wolff* hearing, the court below held that *Parratt* was irrelevant to Patterson's procedural rights because the allegations contained in his complaint raised an issue of fact as to whether his punitive detention was foreseeable by the state officials who were authorized to grant Patterson the predeprivation hearing *Wolff required.* That holding is consistent with *Parratt* and *Hudson,* is not of constitutional dimension, and does not warrant this Court's review.

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* "The underlying rationale in *Parratt* is that when deprivations of property are effected through random and unauthorized conduct of a state employee, predeprivation procedures are simply 'impracticable' since the state cannot know when such deprivations will occur." *Hudson* v. *Palmer,* 468 U.S. at —, 104 S. Ct. at 3203 (1984).

Petitioners nonetheless seek this Court's reversal of the lower court's decision that *Parratt* does not bar Patterson's section 1983 claim. Petitioners first argue that because their treatment of Patterson violated state regulations, the lower court erred in not holding that their conduct was unauthorized and random—and accordingly unforeseeable. Petition at 6, 8.

As a preliminary matter, this Court should not involve itself in resolving such inherently factual issues as whether specific instances of prison officials' treatment of prison inmates were authorized. Such restraint is particularly appropriate here since no record has yet been developed.

Petitioners' position is also logically unsound. State authorities do not always act in conformity with state law. Whether the state can foresee state action in violation of state law depends upon a variety of factual considerations, including the transgressor's hierarchal position within the state and whether similar conduct has occurred in the past. The illegality of the conduct, while arguably of relevance, does not necessarily negate its foreseeability or establish that it was random and unauthorized.

Indeed, the enactment of section 1983 was motivated in large measure by Congress' recognition that state authorities do not always obey state law. *See, e.g., Monroe* v. *Pape*, 365 U.S. 167, 174 (1960). Acceptance of petitioners' position would inappropriately circumscribe the scope of section 1983; by petitioners' logic, whenever the state action complained of violates state law as well as the United States Constitution, the deprivation will be "unauthorized and random," and thus no section 1983 claim will arise.*

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* Petitioners' argument, if taken to its logical conclusion, would allow any state to insulate itself from all liability under section 1983

(footnote continued on following page)

Petitioners' position contradicts the many prior decisions of this Court holding that section 1983 encompasses state action that violates state law. *See, e.g., Monroe* v. *Pape*, 365 U.S. 167 (1960); *Screws* v. *United States*, 325 U.S. 91, 108 (1944); *United States* v. *Classic*, 313 U.S. 299, 325-26 (1940); *see also Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U.S. 278, 282-85 (1913). For example, this Court held in *Monroe* that: "the fact that Illinois by its constitution and laws outlaws unreasonable searches and seizures is no barrier to the present [section 1983] suit in the federal court." 365 U.S. at 183. Petitioners have advanced no reason why such consistent statutory construction over the course of forty years should now be reconsidered.

Finally, petitioners' position has been rejected in *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422 (1981), where this Court held that *Parratt* did not apply where a state administrative body, acting in clear violation of state law, permitted claimant's administrative action to terminate by failing to initiate timely consideration of the claimant's allegations. *Id.* at 435-37.

Petitioners next challenge the lower court's refusal to apply *Parratt* to bar Patterson's section 1983 claim on the ground that the state—according to petitioners—could not have foreseen Captain De Santos' failure to conduct a proper *Wolff* hearing. This contention also raises an inherently factual question that is not an appropriate subject for this Court's review.

(footnote continued from preceding page)

—regardless of whether a violation occurred—by simply enacting legislation prohibiting "the deprivation of any rights, privileges or immunities secured by the Constitution and laws" of the United States, thereby rendering any such deprivation "unauthorized". This obviously was not the intent of Congress. The Second Circuit soundly rejected such a preposterous outcome.

Moreover, petitioners' focus on the foreseeability of the particular errors committed by the hearing officer, as opposed to the foreseeability of petitioners' deprivation of Patterson's liberty, seriously misconstrues the holdings of *Parratt* and *Hudson*. In *Parratt* and *Hudson*, this Court reasoned that when a deprivation of property was by its nature unforeseeable, the due process clause could not reasonably be construed to require the state to provide predeprivation process. Thus, under those cases, the relevant factual inquiry is whether the deprivation—that is Patterson's loss of liberty and not the manner in which the state conducted his hearing—was foreseeable.* The court below made the proper inquiry and held that Patterson's complaint raised at least a material factual question as to whether petitioners' deprivation of his liberty was foreseeable.

3. This Court has already rejected the exhaustion requirement petitioners attempt to impose.

Petitioners argue that even if the hearing accorded Patterson violated his due process rights, the availability of state judicial remedies bars Patterson's claim under section 1983. Petition at 8-9. Petitioners would thus impose an exhaustion requirement upon actions arising under section 1983, a requirement which this Court has repeatedly rejected in the past. *See, e.g., Patsey* v. *Board of Regents*, 457 U.S. 476 (1982); *Monroe* v. *Pape*, 365 U.S. 167, 183 (1961).

Parratt did not, as petitioners suggest, carve out an exception to the non-exhaustion rule for section 1983 claims

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* Moreover, even assuming that the foreseeability of the hearing officer's mistakes was the relevant inquiry, these errors, having already been made, were certainly "foreseeable" by the time petitioners Coughlin and Smith, the state officers with ultimate responsibility for such matters, ratified the hearing officer's decisions.

arising in prison settings. Nor did *Parratt*, as petitioners contend, hold that the availability of state court remedies nullifies any due process violation that has already occurred. Rather, as many courts have correctly recognized, *Parratt* holds only that when, due to the nature of the deprivation in question, predeprivation process is impossible, adequate post-deprivation remedies may satisfy the requirements of due process. *See, e.g., Hudson* v. *Palmer*, 104 S. Ct. at 3203, *Thibodeau* v. *Bordelon*, 740 F.2d 329, 336-37 (5th Cir. 1984); *Jones* v. *Clark*, 607 F. Supp. 251, 255 (E.D. Pa. 1984). To turn this holding into the proposition that when predeprivation process *is* possible, post-deprivation remedies may nonetheless satisfy due process, stands *Parratt* on its head.

Less than a year after *Parratt* was decided, this Court implicitly rejected the imposition of a new post-*Parratt* exhaustion requirement on section 1983 claims, holding that the availability of a post-deprivation tort remedy does not undermine the due process claim of a plaintiff who complains of a constitutional flaw in an established state procedure. *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422 (1982); *see also Brewer* v. *Blackwell*, 692, F.2d 387, 395 (5th Cir. 1982) ("possibility" of post-deprivation state court recovery is insufficient to afford due process to one falsely arrested and detained).

Petitioners cannot deny that a predeprivation hearing was possible in this case—indeed they provided a predeprivation hearing, albeit an inadequate one. Petitioners contend not that they were unable to provide a proper hearing under *Wolff*, but that they were not required to do so. Thus, petitioners' unjustifiable denial of an adequate pre-

deprivation hearing cannot be cured by whatever judicial remedies may eixst on the state level.*

4. The decision below does not conflict with decisions reached by other circuits.

Petitioners have not cited a single circuit court decision in genuine conflict with the decision of the court below. In *Collins* v. *King*, 743 F.2d 248 (5th Cir. 1984), petitioners' only "inconsistent" decision involving prisoner disciplinary proceedings, Petition at 9, the prisoner-plaintiff complained only of the bias of a single prison officer who had unexpectedly conducted the prisoner's disciplinary hearing. Because Mr. Collins had not pursued an appeal within the prison system, the challenged conduct of his hearing officer had not been reviewed by other prison authorities. In contrast, petitioners Coughlin and Smith—the New York State Superintendent of Prisons and Superintendent of Attica Correctional Facility—reviewed and affirmed the conduct of petitioner Captain De Santos at Patterson's Superintendent's Proceeding. The two cases thus involve conduct at substantially different levels of state authority and finality.

Petitioners' remaining two "inconsistent" decisions involve procedural challenges to the determinations of local administrative bodies. *See Cohen* v. *City of Philadelphia*, 736 F.2d 81 (3d Cir. 1984), *cert. denied*, 105 S. Ct. 434 (1985); *Creative Environments, Inc.* v. *Estabrook*, 680 F.2d 822 (1st Cir. 1982), *cert. denied*, 459 U.S. 989 (1980); Petition at 9-11. These decisions are of little relevance here and, in any event, are not inconsistent with the

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* In any event, the inadequacy of the state remedy to which the petitioners allude is highlighted by the fact that Patterson had already spent sixty-five days in punitive detention and had been returned to the general population by the time the state court heard his case.

decision below. While claiming that they had been accorded insufficient process, the complainants in *Cohen* and *Estabrook*, unlike Patterson, did not allege that the state had violated specific procedural safeguards previously identified by this Court as the minimum process required by the Constitution.

5. The decision below will not increase section 1983 litigation in the federal courts.

Finally, petitioners urge that the decision below would open the courts to a flood of section 1983 claims arising out of "any mistake in a *Wolff* hearing". Petition at 7. Petitioners' argument rests upon a misreading of this Court's decision in *Wolff* and of the decision below. *Wolff* simply recognized that due process requires that certain limited, well defined standards must be met in prisoner disciplinary actions. The court below did not address mistakes that might occur outside the realm of the fundamental safeguards identified by this Court in *Wolff*, nor did the court below hold that all mistakes in *Wolff* hearings are incapable of post-deprivation remedy. The court below simply held that the failure to follow the fundamental procedures specifically enunciated in *Wolff*, prior to placing an inmate in punitive detention, violates due process.

Conclusion

At bottom, petitioners disagree with the circuit court's conclusion that Patterson's complaint contained sufficient allegations of authorized state conduct to entitle Patterson to offer evidence in support of his claims. Such a disagreement is an inadequate basis for granting a writ of certiorari.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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